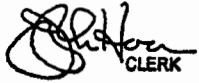


FILED

MAR 30 2017


CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISIONSTATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

vs.

DEERFIELD HUTTERIAN BRETHERN INC.
and JANOS STAHL,

Defendants.

1:16-CV-1016-CBK

ORDER

The plaintiff has moved for default judgment pursuant to the plaintiff's affidavit and application for default judgment. The Court, having examined the proofs and being fully advised, finds this matter to be untimely. At this time, the plaintiff has a conflict of interest in defending Janos Stahl in the wrongful death action and simultaneously seeking a declaratory judgment that is adverse to his interests. "A conflict of interest exists when the injured person's claim against the insured is such that it could be sustained on different grounds, one of which is within the insurer's obligation to indemnify and another of which is not." St. Paul Fire & Marine Ins. Co. v. Engelmann, 639 N.W.2d 192, 200 (S.D. 2002). In the plaintiff's complaint, it asserts that Janos Stahl did not have the consent of Deerfield Colony to drive the 2000 GMC Jimmy off its property on February 9, 2014. There is a conflict of interest because the jury in the wrongful death action will decide the issue of whether Janos had implied permission to drive the 2000 GMC Jimmy on public roads that night. The answer to such question will be helpful in determining whether the automobile accident is covered by the insurance policy. "By reserving the noncoverage issue, a conflict of interest will be avoided and the interests of the insured and

the insurer in defending against the injured claimant will be identical.” Id. Therefore, the Court finds the issue of coverage is not yet fit for adjudication, and that there will be little hardship to the parties in withholding court consideration, as this matter lacks ripeness.

IT IS ORDERED:

1. Plaintiff’s motion for default judgment, Doc. 8, is denied.
2. Plaintiff’s case is dismissed without prejudice.

DATED this 30th day of March, 2017.

BY THE COURT:

A handwritten signature in black ink, reading "Charles B. Kornmann". The signature is written in a cursive, flowing style. The first name "Charles" is written with a large, prominent "C". The last name "Kornmann" is written with a large "K" and a long, sweeping tail that extends to the right.

CHARLES B. KORNMANN
United States District Judge